

MINUTES
LEGISLATIVE RESEARCH COMMISSION (LRC)
ENERGY POLICY ISSUES

COMMITTEE MEETING

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Energy Expansion Act

This proposal was a joint effort between me, Ms. McGinnis, and Ms. Mundt. It is the most extensive of the proposals and Ms. McGinnis will cover the initial portion of the proposal and Ms. Mundt the next portion.

Ms. Jennifer McGinnis: The proposal is broken up into parts with descriptive titles that basically summarize each provision. Moving through it, on page 38 of your packet, Part I is Legislative Findings and Intent. There are several “Whereas” clauses having to do with hydraulic fracturing. Part II establishes an Oil and Gas Board. That board would be given the power and duty to promulgate rules governing management on oil and gas exploration and development activities in the State. It would have jurisdiction and authority over those activities concurrent with the Department of Environment and Natural Resources. On page 41 you will see a number of specific issues that the Oil and Gas Board is directed to promulgate rules on. These include well construction and siting standards, including set-back requirements, limits on water use, prohibitions on use of certain chemicals and constituents in hydraulic fracturing fluids, management of wastes that are produced in connection with these activities, stormwater control, installation of appropriate safety devices and emergency protocols, full disclosure of hydraulic fracturing chemicals and constituents, proper well closure and site reclamation, and other matters the Board deems necessary.

On page 42, you will see a number of additional powers and duties given to the Board. These mirror those that are currently given to the Department of Environment and Natural Resources under current law, Article 27 that governs oil and gas activities. The Oil and Gas Board, under G.S.113-431, would be given quasi-judicial powers. This bill establishes procedures for that. These are very similar to that which the Environmental Management Commission currently has.

On page 44 of the bill, it describes the membership, the Oil and Gas Board, there are nine members, three of those appointments would be the governor's, three by the President Pro Tem of the Senate, and three by the Speaker of the House. Their terms

would be for a period of three years, and the current Division of Land Resources would serve as staff to the Oil and Gas Board.

On page 46 of the proposal, there is an exemption to the Public Records Act that is established for information and records and materials data. For a period of two years, those would be exempt from public records disclosure. Matters which are designated as trade secrets would continue to be retained as confidential.

Under Section 1(c) at the bottom of page 46, the provision would require that the Oil and Gas Board adopt rules governing oil and gas activities by December 31, 2013, at the latest. They would be required to report to the Joint Legislative Commission on Energy Policy by May 1, 2013. This Joint Legislative Commission on Energy Policy is actually created in a later part of this same provision.

Part 3 of the provision makes a variety of statutory and rule changes that authorize horizontal drilling and hydraulic fracturing. The first Section 2(a) makes some necessary definitions.

Section 2(b) amends the current powers and authorities of the department under Article 27 to give it concurrent jurisdiction with the newly created Board. It also adds some new public records information and makes isolated changes to the current power and duties, again to accommodate the process of hydraulic fracturing. There are also two other statutes that would be amended. One is the statute that currently prohibits horizontal drilling. As you will see at the top of page 51, subsection (d) variation from vertical, there is new language added that would exempt processes related to hydraulic fracturing so horizontal drilling would be permitted.

Section 2(d), this is a change to a statute that currently prohibits subsurface injection of fluids and it, again, would exempt the process of hydraulic fracturing from those prohibitions.

The next several sections are various rule changes with specific rules that currently prohibit the practice of hydraulic fracturing. The department would be prohibited from enforcing these specific rules. There is also a catch-all provision, Section 3(e), for any rules that we may not have identified that, if they do impact the process of horizontal drilling, the department would be prohibited from enforcing those as well.

In Section 4, however, there is a moratorium established on the issuance of permits for oil and gas exploration and development activities using the processes of horizontal drilling and hydraulic fracturing. This moratorium would endure until July 1, 2014.

The next section, Part 5, contains miscellaneous provisions related to oil and gas exploration. The first one is an authorization to local governments that would have wells within their jurisdiction to impose an annual impact fee. That fee would be capped at \$30,000 per well.

The next section concerns local ordinances that would prohibit oil and gas activities. This section would pre-empt such ordinances and it is modeled after a similar provision that restricts local ordinances that pertain to siting of hazardous waste facilities.

Under Section 7(a) on page 56, the provision would rename the Division of Land Resources within the Department of Environment and Natural Resources to the Division of Energy, Mineral, and Land Resources.

The next Section, Part 5, would create the Joint Legislative Commission on Energy Policy. That commission would have 10 members. Five appointed by the President Pro Tem, five by the Speaker of the House, and it would have oversight over all matters pertaining to energy policy in the state.

That is the end of the fracking-related provisions and Jennifer Mundt will explain the rest of it.

Ms. Jennifer Mundt: Continuing on page 58 of the Legislative Proposal, Part 6 of the proposal would direct the Department of Public Instruction to purchase school buses that run on compressed natural gas (CNG) when replacing school buses due to their age, mileage, or condition of the school bus. The provision also directs the Department of Public Instruction to work with local school administrative units to develop a plan to deploy those CNG buses throughout the state.

Part 7 on page 59, directs the Department of Transportation (DOT) to purchase new three-quarter-ton pickup trucks that operate on CNG and gasoline. There is a schedule set out in that provision that requires the DOT, beginning July 1, 2013, to purchase 50 percent of those new bi-fuel trucks when they purchase new trucks and then beginning July 2, 2015, 100 percent of the new trucks purchased by the department would have to be bi-fuel running on CNG and gasoline.

Part 8 of the Legislative Proposal on page 60 directs the Department of Public Instruction, the Department of Transportation, together with the Departments of Commerce and Administration to create an inner-agency task force that would be responsible for establishing public/private partnerships with the CNG industry in order to develop CNG fueling infrastructure that would support the operation of the CNG school buses and pickup trucks that the Departments of Public Instruction and Transportation are directed to purchase pursuant to the previous two described provisions.

Part 9 of the proposal on page 60, establishes criteria for the Department of Transportation's operation of electric vehicle charging stations that are located at state-owned rest stops along the highways. The criteria the department would have to develop and consider are those that provide for accessibility by the public of those charging stations and mechanisms to recover the cost of the electricity consumed by the consumer and operations, maintenance and processing fees.

Mr. Jeffrey Hudson: Mr. Hudson explained the last portion of the Energy Expansion Act.

In Part 10, dealing with tires for school buses, it would provide that contracts for school bus tires executed on or after July 1, 2012, shall not include any specification for retread rubber formulations, it also provides that contracts executed on or after that date shall include specifications requiring pre-cure fuel efficient rated retread tires as certified by the retread rubber manufacturer.

Part 11 deals with the Energy Jobs Act of 2011. This was the Act that was passed by the General Assembly and vetoed by the Governor. It provides that if the Act ultimately becomes law, certain amendments are made to the Act. Those amendments start near the top of page 63 of the report. The first section is dealing with the compact that was in the Energy Jobs Act. This would now, rather than direct the Governor to start work on this compact, direct the Governor to lay the groundwork for development of a regional energy strategy by working with the governors of South Carolina and Virginia to develop recommendations for the creation and implementation of a regional unified strategy. It also, on that particular topic, would direct the Governor to give final recommendations on this topic to the President Pro Tempore of the Senate and the Speaker of the House no later than December 31, 2012. There are some smaller changes but the other major change, Section 14(b), repeals certain sections of the Energy Jobs Act. Those are basically shale gas study provisions. I think they have largely been superseded by the study the chair referenced the Department of Environment and Natural Resources has been undertaking. There are some additional changes that would be made to the membership of what would be called the Energy Jobs Council under this Act. All these provisions we have described to you would become effective when they become law. That covers the major substantive items in the second proposal.